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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,892	12/15/2000	Mark G. Obukowicz	3374 (PHA 4140)	2003

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EXAMINER

MELLER, MICHAEL V

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 07/15/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/737,892

Applicant(s)

OBUKOWICZ ET AL.

Examiner

Michael V. Meller

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-93 is/are pending in the application.
- 4a) Of the above claim(s) 6-34, 36 and 38-77 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 35, 37 and 78-93 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

The election of species of record is noted. Claims 6-34, 36, 38-77 do not read on the elected species.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 1-5, 35, 37, 78, 79, 81, 85-93 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 248215.

Claim 1 recites that a organic extract of an edible plant (of which applicant elected, *Vitex agnus-castus*) is administered to an organism. The extract of the reference when administered to a patient will inherently perform the effect of claim 1 since it is the same product given to a patient. The patient in the claim is the same patient as is in the reference. The claim does not distinguish between the patients. The extract of the reference when administered to a patient will indeed selectively inhibit COX-2 since it is the same extract as instantly claimed.

Claims 1-5, 35, 37 and 78-93 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 248,215 taken with Hawley's Condensed Chemical Dictionary.

Applicant again seems to be arguing the same points. Thus, the above comments are reiterated here.

Claims 1-5, 35, 37, and 78-93 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2000236835 (JP) in view of EP 248215 (EP) and Hawley's Condensed Chemical Dictionary.

Applicant again seems to be arguing the same points. Thus, the above comments are reiterated here.

Additionally applicant states that JP has other ingredients in its composition, but applicant's claims are not limited to only *Vitex agnus-castus*.

Further, applicant states that the skilled artisan would not assume that a composition useful for treating cancer would be similarly useful for treating COX-2 mediated diseases but this is simply false. It is well known in the art that inhibiting COX-2 is an important strategy in treating cancer as is evident in Subbaramaiah et al. (reference 76, supplied by applicant). It discusses that compounds that are known to be useful for cancer treatment are also effective in inhibiting COX-2. Thus, there is further clear motivation to use the extract for the claimed purpose.

Thus, the claims are properly rejected.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

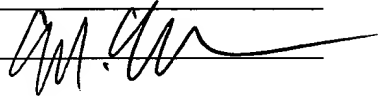
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 703-308-4230. The examiner can normally be reached on Monday thru Friday: 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 703-308-4743. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0294 for regular communications and 703-308-0294 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

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Michael V. Meller
Examiner
Art Unit 1651

MVM
July 11, 2002